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IN THE

Supreme Court of the United States

October Term, 1975

No. 75-162

NELSON BUNKER HUNT,

Petitioner,

v.

COASTAL STATES MARKETING, INC., CLAIMANT OF A CARGO OF PETROLEUM PRODUCTS LADEN ON THE STEAM TANKER HILDA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioner, Nelson Bunker Hunt, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered May 5, 1975.

Opinions Below

The opinion of the United States District Court for the Eastern District of Pennsylvania on the dismissal of the original complaint is reported at 378 F.Supp. 701 and is printed as Appendix B hereto. The opinion of the same court on the dismissal of the amended complaint has not as yet been reported, but is printed as Appendix D hereto.

The opinion of the United States Court of Appeals for the Third Circuit has not as yet been reported, but is printed as Appendix E hereto.

Jurisdiction

The jurisdiction of the District Court was invoked pursuant to the Admiralty Clause of the Constitution (Article III, Section 2, Clause 3), § 1333 of Title 28 U.S.C. (the Judicial Code), and F.R.Civ.P., Rule 9(h) and Supplemental Rule D.

The judgment order of the Court of Appeals for the Third Circuit was entered May 5, 1975.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Questions Presented

1. Did the courts below err in holding, contrary to this Court's decision in *Post* v. *Jones*, 60 U.S. 150 (1857) and Supplemental Rule D, F.R.Civ.P., that an action for possession of cargo on board a vessel in navigable waters is not within the admiralty jurisdiction of a United States district court unless the claimed right to possession is based upon the commission of a maritime tort or the breach of a maritime contract, or is incident to matters which are clearly maritime?

2. Did the courts below err in holding that in the case at bar, the claimed right to possession was not based upon the commission of a maritime tort? (There was and is no contention that it was based upon the breach of a maritime contract).

Constitutional Provision Involved

Article III, Section 2, Clause 3:

> "The judicial Power shall extend * * * to all Cases of admiralty and maritime Jurisdiction * * *."

Statutes and Rules Involved

28 U.S.C. § 1333(1):

> **"Admiralty, maritime and prize cases**
>
> The district courts shall have original jurisdiction, exclusive of the courts of the States, of:
>
> (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled."

Federal Rules of Civil Procedure

Rule 9(h):

> **"Admiralty and Maritime Claims**
>
> A pleading or count setting forth a claim for relief within the admiralty and maritime jurisdiction that is also within the jurisdiction of the district court on some other ground may contain a statement identifying the claim as an admiralty or maritime claim for the purposes of Rules 14(c), 38(e), 82, and the Supplemental Rules for Certain Admiralty and Maritime Claims. If the claim is cognizable only in admiralty, it is an admiralty or maritime claim for those purposes whether so identified or not. * * *."

Supplemental Rule D:

> **"Possessory, Petitory, and Partition Actions**
>
> In all actions for possession, partition, and to try title maintainable according to the course of the admiralty practice with respect to a vessel, in all

actions so maintainable with respect to the possession of cargo or other maritime property, and in all actions by one or more part owners against the others to obtain security for the return of the vessel from any voyage undertaken without their consent, or by one or more part owners against the others to obtain possession of the vessel for any voyage on giving security for its safe return, the process shall be by a warrant of arrest of the vessel, cargo, or other property, and by notice in the manner provided by Rule B(2) to the adverse party or parties."

Statement

The decision which Petitioner seeks to have this Court review affirmed a district court decision dismissing an amended complaint in a possessory action in admiralty brought under Supplemental Rule D, F.R.Civ.P. (p. 3, *supra*), by Petitioner Nelson Bunker Hunt ("Hunt") and by BP Exploration Company (Libya) Limited ("BP"), as owners of a cargo of petroleum products carried from Priola, Italy to Philadelphia on the Steam Tanker HILDA. The District Court's admiralty jurisdiction was duly invoked by Petitioner Hunt and by BP in the original complaint (Appendix A-1*) and in the amended complaint (Appendix C-1), which specifically allege that the case is one of admiralty and maritime jurisdiction, and an admiralty and maritime claim within the meaning of Rule 9(h), F.R.Civ.P. (p. 3, *supra*).

Immediately after commencement of the action, Respondent, Coastal States Marketing Inc. ("Coastal"), alleging ownership of the HILDA's cargo, filed a claim to the cargo and a special bond in the sum of $1.25 million, to

* References to Appendices A through E attached hereto are designated by the appropriate letter followed by the page number.

"stand in place of the cargo", whereby it was stipulated that in consideration of Hunt and BP refraining from actually causing the seizure of the cargo pursuant to the prayer of the Complaint, Coastal, as claimant of the cargo, would pay any final judgment and comply with any final order entered in the action, or on appeal, with interest and costs. The cargo was thereupon discharged.

The original complaint alleged, *inter alia*, that the HILDA's cargo consisted from "Concession No. 65" in Libya, then jointly owned by Hunt and BP; that the Concession had been wrongfully seized by the Libyan Government; that following the seizure Coastal's parent company had taken delivery of oil from the Concession, despite notice of Hunt's and BP's continuing rights with respect to such oil; that all or part of the HILDA's cargo consisted of oil so produced and subsequently converted by Coastal's parent company, or its subsidiaries or affiliates; and that Hunt and BP were the lawful owners of all or part of the cargo and entitled to possession thereof. (Appendix A-1 to A-4).

Coastal answered and moved to dismiss the complaint, contending that the action was not within the District Court's admiralty jurisdiction. Hunt and BP opposed the motion.

After hearing argument, the District Court ordered the Complaint dismissed "unless plaintiffs file an amended complaint within twenty (20) days". (Appendix B-8).

The District Court conceded that a *vessel* has a character sufficiently maritime to bring an action for its possession within the admiralty jurisdiction, even if the claimed right to possession is not based on the breach of a maritime contract or the commission of a maritime tort. But in the

District Court's view, "The question whether admiralty provides for jurisdiction to try title to or possession of property other than ships, such as the cargo in this case, absent the existence of a maritime tort or contract, is not as clear". (Memorandum Opinion accompanying Order dismissing original complaint) (Appendix B-5). It then concluded that it lacked jurisdiction in such a case.

The District Court, in referring to the contention of Hunt and BP that Coastal had committed a maritime tort in directing the HILDA to remain outside United States waters and to burn their cargo as fuel if Coastal decided to send the HILDA back to Italy, said that since these facts had come to light after the filing of the complaint it would not consider them on a motion to dismiss but would allow Hunt and BP time to amend. (Appendix B-8).

Accordingly, within the time allowed, Hunt and BP filed an amended complaint repeating in substance the allegations of the original complaint, but alleging, in addition, that on or about July 31, 1973, the cargo had been laden on the HILDA at Priola, Italy; that on August 6, Coastal, as Charterers of the HILDA, had advised the Vessel's Owners that they intended to discharge the cargo at either Boston or Philadelphia; that on August 9th Coastal (or persons acting on their behalf) had ordered the cargo discharged at the Texaco Terminal at Boston; that on August 11th Coastal had ordered the cargo discharged at the Union Oil Terminal at Boston instead; that on August 12th Coastal had instructed the HILDA's Owners to order the Vessel to wait outside Boston for further instructions; that on August 13th Coastal had instructed the Vessel to remain well beyond the 12-mile limit of the "contiguous zone", and had advised her Owners that they

(Coastal) might want to have the Vessel return to Priola and discharge her cargo there, without entering a United States port, in which event Coastal would authorize the use of the cargo as fuel for the Vessel; that later on the same day Coastal had repeated their instructions that the HILDA "definitely remain beyond the 12-mile limit" and not enter the Boston port area; that finally, on August 16th, Coastal had changed the voyage orders and had directed the HILDA to proceed to Philadelphia and there discharge her entire cargo, and that these acts constituted maritime torts. (Appendix C-1 to C-7).

Coastal then moved to dismiss the amended complaint for lack of jurisdiction.

On August 21, 1974, the District Court entered an Order (Appendix D-1), dismissing the amended complaint. In its Memorandum Opinion accompanying the Order, the District Court adhered to its view that it had no jurisdiction of an admiralty action for possession of a cargo on board a vessel in navigable waters unless the claim was based on the breach of a maritime contract or the commission of a maritime tort, or was incident to matters clearly within the admiralty jurisdiction, and further held that the actions of Coastal alleged in the amended complaint did not constitute a maritime tort (Appendix D-1 to D-2).

Hunt and BP filed separate appeals from the District Court's decision. On November 20, 1974, a settlement agreement was reached between BP and the Libyan Government, whereunder the latter agreed to make a certain payment to BP for its interest in Concession No. 65, upon receipt of which BP would relinquish its interest in the HILDA's cargo and discontinue its appeal. See Pars. 3 and 4 of BP's Motion for Enlargement of Time, dated December 6, 1974, in No. 74-2092 in the Court of Appeals. However, no settlement having been effected between the Libyan Govern-

ment and Hunt, the latter continued to claim a one-half interest in the cargo, now represented by the special bond heretofore described, and prosecuted the appeal in respect of such one-half interest, to the United States Court of Appeals for the Third Circuit, which affirmed the decision "for the reasons stated by the two district court opinions", adding that the District Court had stated that it had admiralty jurisdiction in actions for the possession of cargo in cases involving either a maritime tort or a maritime contract, "or when the question relating to the cargo was incident to matters clearly within the admiralty jurisdiction". (Appendix E-2).

Reasons for Granting the Writ

I.

The decision below plainly contravenes *Post* v. *Jones*, 60 U.S. 150 (1857), the only decision of this Court relating to admiralty actions for possession of cargo, and with Supplemental Rule D, F.R.Civ.P. pp. 3-4, *supra*, which recognizes the admiralty jurisdiction of the district courts of such actions, regardless of the basis of the right of possession claimed by the plaintiff. Neither *Post* v. *Jones* nor Rule D draws any distinction whatever between such actions and actions for possession of vessels.

The full significance of *Post* v. *Jones* can best be realized by first examining the Court's earlier decision in *Ward* v. *Peck*, 59 U.S. 267 (1856). There the libellants, contending that the sale of their bark by her master following a grounding was unauthorized, brought a petitory action in admiralty, seeking an adjudication that they still had title to the vessel. A judgment of the Circuit Court in favor of libellants was affirmed by this Court, Mr. Justice Grier stating that "the pleadings in this case present but the single question of the title or ownership of the Bark Mopang".

Mr. Justice Daniel, the only dissenting Justice, was of the view that the case was not one "regularly appertaining to a court of admiralty" because it presented "no example of a maritime contract or of a maritime tort". In disagreeing with Mr. Justice Daniel, and in stating that the pleadings presented the single question of the title or ownership of the bark, Mr. Justice Grier, for the majority, thus conclusively rejected the view that there must be a breach of a maritime contract or commission of a maritime tort in order to sustain admiralty jurisdiction even in a petitory action relating to a vessel. While a cargo was not involved, there is nothing in the majority opinion in *Ward* v. *Peck* to indicate that the result would have been any different if the action had been for possession of a cargo, and even the minority opinion attempts to draw no distinction whatever between vessels and their cargoes for jurisdictional purposes.

Post v. *Jones* was decided less than a year after *Ward* v. *Peck*, and again the opinion was written by Mr. Justice Grier. The libellants brought a possessory action in admiralty against the proceeds of a cargo of whale oil and bone taken from a whaler after she had stranded on the Asiatic side of Behring's Strait, by the crews of two other vessels in which the oil and bone were carried home and sold as part of their cargoes.

The libellants prayed for delivery of possession of the oil and bone, or their proceeds, if sold, subject to "salvage and freight". The owners of the two vessels which had brought back the oil and bone filed a claim to the cargo, contending they had purchased the stricken whaler and her cargo from the master. The libellants contended the sale was invalid; that the claimants of the cargo did not acquire title to the cargo thereby, and that they (the claimants) were entitled only to "salvage and freight" for bringing the

cargo home. The District Court upheld the sale by the master, *Jones* v. *The Richmond*, 13 Fed. Cas. 1008 (No. 7,491) (S.D.N.Y. 1853), but the decree was reversed by the Circuit Court, which held that the sale was void, although the claimants were entitled, as salvors, to a moiety of the net proceeds of the sale of the cargo. Note following the District Court's opinion, 13 Fed. Cas. 1012.

On appeal, this Court agreed that the sale was void and that the claimants of the cargo did not acquire a valid title to the oil and bone, but were entitled to be treated only as their salvors. This Court agreed with the Circuit Court except that it held that the proper allowance was a moiety of the value of the salvaged cargo at the first safe port reached by the salving vessels—in the Sandwich (Hawaiian) Islands—plus an allowance for freight for the carriage of the libellants' moiety to a better market at the vessel's home port (Sag Harbor, L.I., N.Y.).

Libellants' claim to possession of the cargo or its proceeds in *Post* v. *Jones* was *not* based upon the breach of a maritime contract or the commission of a maritime tort, nor was it incidental to other matters which were clearly maritime, and yet at no time did this Court question the admiralty jurisdiction of the District Court to entertain a possessory action against the cargo or its proceeds. Aside from the quantum of the award, the issue was simply whether the sale of the cargo by the master did or did not convey good title to the cargo to the claimants; this Court held it did not, and that libellants were therefore entitled to a decree of possession.

The decision in *Post* v. *Jones* was unanimous; apparently Mr. Justice Daniel had meanwhile been persuaded that the majority opinion in *Ward* v. *Peck* was correct.

While there do not appear to be any decisions of this Court involving actions for possession of cargoes other than

Post v. *Jones*, a number of lower federal court decisions concern possession of cargo and other maritime property.

Thus, in *The Denny*, 40 F. Supp. 92 (D.N.J. 1941), reversed on other grounds, 127 F. 2d 404 (3d Cir. 1942), a possessory action was brought against a cargo, as well as a vessel. No distinction whatever was drawn by the District Court (or by the Court of Appeals) between the vessel and her cargo for jurisdictional purposes, although no maritime tort or breach of a maritime contract appears to have been involved.

Other modern possessory action cases wherein no such distinction was drawn include *Yokohama Specie Bank* v. *Wang*, 113 F. 2d 329 (9th Cir., 1940), cert. denied 311 U.S. 690 (1940) (possessory action against cargo); *Otis* v. *International Mercantile Marine Co. and 4,216 Stems of Bananas*, 1937 A.M.C. 1092 (S.D. Cal. 1936; not officially reported), appeal dismissed as moot, 95 F. 2d 539 (9th Cir. 1938) (possessory action against cargo); *Luckenbach S.S. Co.* v. *The Cargo Laden in The North Haven*, 1935 A.M.C. 1475 (E.D. La. 1935; not officially reported) (possessory action against cargo); *The Tietjen & Lang No. 2*, 53 F. Supp. 459 (D.N.J. 1944), motion to dismiss appeal denied, 143 F. 2d 711 (3d Cir. 1944) (possessory action against a derrick lighter and maritime equipment); *New England Trawler Equipment Co.* v. *One Model D. Trawler Winch*, 5 F. Supp. 627 (D. Mass. 1933) (possessory action against a winch); *Atamanchuck* v. *Atamanchuck*, 61 F. Supp. 459 (D.N.J. 1945) (possessory action against a vessel); *Gallagher* v. *The River Queen*, 475 F. 2d 117 (5th Cir. 1973) (possessory action against a pleasure boat); *O.F. Shearer & Sons, Inc.* v. *Decker*, 349 F. Supp. 1214 (S.D.W.Va. 1972) (civil action removed to federal court for diversity; dictum that plaintiff could have brought an

action in admiralty for possession of a vessel's propeller, citing *Post* v. *Jones, supra*).

The failure of the courts below to recognize admiralty jurisdiction of an action for possession of cargo, regardless of the basis upon which the right to possession is claimed, may be traced to a dictum of the District Court for the District of Massachusetts in *528 Pieces of Mahogany*, 9 Fed.Cas. 200, 201 (No. 4,845) (D.Mass. 1874), the italicized portion of which was quoted by the District Court in its first opinion (Appendix B-6) in the case at bar:

> "* * * I am unable to see that *Post* v. *Jones*, and other like cases, can rest on any less broad foundation than this, that *where the possession of movable property has been changed, against the right of the true owner, either by a maritime tort or by the breach of a maritime contract, to which the property was subject, the owner may vindicate his title in a court of admiralty, not only in personam, which is not doubted, but also in rem.*"

It will be noted that the District Court did not say that *only* where possession has been changed by a maritime tort or the breach of a maritime contract will a possessory action lie, although the court's language there appears to have been so interpreted in *The Blairmore I*, 10 F.2d 35 (2d Cir. 1925), also cited by the District Court in the case at bar (Appendix B-6). But a statement in *The Blairmore I* approving the language quoted from *528 Pieces* is pure dictum: the Court specifically declined to express any opinion on the question whether a seizure of a cargo of whisky by the Coast Guard for alleged violation of the National Prohibition Act (Comp. Stat. Ann. Supp. 1923, § 10138 1/2 mm) within the territorial waters of the United States could be regarded as a maritime tort, since

it concluded that the libel (complaint) was open to peremptory exception on other grounds, and that "if the pleadings are reformed, possessory suit does not lie for a res governmentally held for forfeiture by judicial process". 10 F.2d 35, at 38.

Moreover, the statement in *The Blairmore I* that "the reasoning of Lowell, J., in *Five Hundred and Twenty-eight Pieces of Mahogany* * * * has received professional acquiescence" (referring to the Fifth Edition of Benedict on Admiralty, p. 102) is inaccurate. The reference is to Volume I of the Fifth Edition, whereat Benedict simply states that "Possessory actions are actions to recover ships or other property to which a party is of right entitled. They are analogous to the action of replevin or detinue at the common law, in which the specific property is recovered instead of damages". A footnote following the phrase "or other property" reads "E.g. cargo", and cites *Post* v. *Jones*, *528 Pieces of Mahogany*, and other cases. *Nothing is said about breach of a maritime contract or the commission of a maritime tort.* The identical textual statement and the identical footnote (except for the addition of two more recent cases) appear in the Sixth Edition of Benedict, published in 1940 (Vol. I., p. 154 and Footnote 11) and in the Seventh Edition, published in 1974 (Vol. I, p. 12-9 and Footnote 5). Nothing found anywhere in Benedict, or in any other text on Admiralty, lends any support whatever to the argument that any different test is required for admiralty jurisdiction in possessory actions against cargoes than is required in the case of possessory actions against vessels.

A statement in *The Bessie Mac*, 21 F.Supp. 220 (W.D. Wash. 1937)—also cited by the District Court in the case at bar (Appendix B-6)—quoting *The Blairmore I*, is likewise dictum; that case involved the seizure of a fishing vessel and a seine net by state authorities for alleged

violation of state law. The Court held that the state had no right to proceed *in rem* against the property in a state court, and therefore denied the state's motion for dismissal of the owner's possessory action.

Except for the dictum in *The Bessie Mac*, the dictum in *The Blairmore I* does not appear to have been followed in any reported case. Indeed, other than the dictum in *The Blairmore I*, no language has been found in the opinions of any appellate court which lends any support to the theory that a maritime tort or breach of a maritime contract is necessary to support a possessory action against cargo, and that dictum is manifestly at variance with this Court's decision in *Post* v. *Jones*, which was not cited in *The Blairmore I*.

Insofar as it relates to possessory actions, Supplemental Rule D, F.R.Civ.P. (pp. 3-4, *supra*), draws no distinction between vessels, on the one hand, and cargoes and other maritime property, on the other. The Rule specifically relates not only to "actions for possession, partition and to try title maintainable according to the course of the admiralty practice with respect to a *vessel*", but to "all actions so maintainable with respect to the possession of *cargo or other maritime property* * * *".*

By its own terms, Rule D thus recognizes that cargoes are "maritime property". Indeed, they are so treated throughout the maritime law. Cargoes, like vessels, are subject to maritime liens, enforceable in admiralty actions *in rem*, and in fact only in such actions. *4,885 Bags of Linseed*, 66 U.S. 108 (1861); see *The Rock Island Bridge*, 73 U.S. 213 (1867) and *Krauss Bros. Lumber Co.* v. *Dimon S.S. Corp.*, 290 U.S. 117 (1933). Services rendered in saving a cargo from a marine peril are just as truly salvage services as are those rendered in saving a vessel, and claims for salvage awards for saving cargo are of course within

* Emphasis throughout has been added.

the admiralty jurisdiction of the federal district courts. *The North Carolina*, 40 U.S. 40 (1841); see *Nolan* v. *A.H. Basse Rederi.*, 267 F. 2d 584 (3d Cir. 1959). A sacrifice of cargo made in a successful effort to save the other interests from a marine peril is the oldest form of general average sacrifice, 2 Digest of Justinian 385 (Monroe translation, 1909), Digest 14.21.1; Laws of Oleron, Articles VIII and IX, 1 Pet. Adm. Apend. iii, 30 Fed. Cas. 1171, and the owners of the cargo sacrificed have a cause of action in admiralty for general average contributions due from the owners of the vessel. *The Ann Elizabeth*, 60 U.S. 162 (1856); *The Mary F. Barrett*, 279 Fed. 329 (3d Cir. 1922). Conversely, an admiralty action *in rem* will lie for general average contributions due from cargo saved as a result of a sacrifice or extraordinary expenditure made by the vessel interests. *Barnard* v. *Adams*, 51 U.S. 270 (1850); *The Margarethe Blanca*, 14 Fed. 59 (C.C.E.D. Pa. 1882). A policy insuring against loss of or damage to cargo caused by a marine peril is just as truly a maritime contract as is a policy of insurance on the vessel herself, and actions for breach of such a policy are plainly within the admiralty jurisdiction of the federal district courts. See *New England Mut. Marine Ins. Co.* v. *Dunham*, 78 U.S. 1 (1870).

Summarizing, the question whether or not the amended complaint alleges the commission of a maritime tort by Respondent should be considered wholly irrelevant in an action brought, as this one was, not for *damages* resulting from a maritime tort, but simply to recover possession of a cargo which Petitioner alleges in his amended complaint was rightfully his. Such an action plainly lies within the admiralty jurisdiction of the District Court conferred by the Admiralty Clause of the Constitution (Article III, Section 2, Clause 3) (p. 3, *supra*), as implemented by the Judicial Code (Title 28 U.S.C. § 1333) (p. 3, *supra*) and Supplemental Rule D, F.R.Civ.P. (pp. 3-4, *supra*).

II.

If this Court were to adhere to its decision in *Post* v. *Jones*, *supra*, and hold that the District Court had admiralty jurisdiction to determine the right to possession of the HILDA's cargo, as alleged in the amended complaint, regardless of the basis on which the right was claimed, it would of course be unnecessary for it to consider the lower court's conclusion that the amended complaint does not allege a right to possession based upon a maritime claim. In any event, the District Court was in error in so concluding.

While the first wrongful act alleged in the amended complaint originated on land, Respondent was guilty of a maritime tort in causing Petitioner's cargo to be loaded on board the HILDA, in thereafter instructing the vessel's master to burn it as fuel, if need be, to keep it outside the contiguous zone, and in finally directing the vessel to Philadelphia for discharge and delivery to the party to whom Petitioner had purported to sell it, presumably while it was still on board the vessel. (Appendix C-4 to C-6).

All of the orders described in the amended complaint, and particularly the authorization to burn Petitioner's cargo as fuel in the event Respondent decided to send the HILDA back to Italy, constituted the wrongful exercise of dominion over cargo on board a vessel in waters within the admiralty and maritime jurisdiction of the United States. See *Sidney Blumenthal & Co.* v. *United States*, 30 F. 2d 247 (2d Cir. 1929), cert. denied 279 U.S. 847 (1929); *The Lydia*, 1 F. 2d 18 (2d Cir. 1924), cert. denied 266 U.S. 616 (1924); *Church* v. *Seventeen Hundred and Twelve Dollars*, 5 Fed. Cas. 669 (No. 2713) (S.D. Fla. 1853); *The Ferreri*, 9 F. 468 (E.D. N.Y. 1881), aff'd 14 F. 589 (C.C.E.D. N.Y. 1882); *The American Ins. Co.* v. *Johnson*, 1 Fed. Cas. 665 (No. 303) (S.D.N.Y. 1827).

The principles which govern in a case where the wrong originates ashore, but is continued at sea were explained by

Mr. Justice Story in *Plummer* v. *Webb*, 19 Fed. Cas. 891 (No. 11,233) (C.C.D. Me. 1827). An *in personam* libel in admiralty was brought by a father against a ship master for the death of his 13 year old son, alleging that the boy had been shipped, with plaintiff's consent, on defendant's vessel, under an agreement whereby defendant was to provide "good, careful, tender and parental usage". Instead, it was alleged, the boy had been mistreated and had been abducted on a second, unauthorized voyage, during which he died. The District Court dismissed the libel on the merits, and on appeal to the Circuit Court the admiralty jurisdiction of the District Court was questioned.

Mr. Justice Story agreed that the libel should be dismissed, but he reached this conclusion because plaintiff was seeking damages on the basis of a breach of the alleged contract whereby the master had agreed to provide "good, careful, tender and parental usage." The contract was held not to be maritime and therefore not within the admiralty jurisdiction. However, in the course of his opinion Mr. Justice Story observed that if the libel had been based on tort, it *would* have been within the jurisdiction. He stated:

> "Here, it is true, the tortious act, or cause of damage, might be properly deemed to arise in port; but it was *a continuing act* and cause of damage *during the whole voyage*. It was, in no just sense, a complete and perfected wrong, until the departure of the vessel from port; and it travelled along with the parties as a continuing injury through the whole voyage, and terminated only with the death of the son at sea." 19 Fed. Cas., at 893.

Ten years later, a somewhat similar case came before Mr. Justice Story. In *Sherwood* v. *Hall*, 21 Fed. Cas. 1292 (No. 12,777) (C.C. D. Mass. 1837), the libel was based on

"a maritime tort, technically called a cause of damage, for the asserted abduction of the minor son of the libellant, and employing him as a seaman on board of the brig Rupee, owned by the respondents. . . ." This time the plaintiff *was* awarded damages. While it is not clear from the facts as reported, it can be inferred from the opinion that the tort may have originated ashore; yet no question appears to have been raised concerning the District Court's admiralty jurisdiction, which was assumed to be proper on the basis of the maritime tort principles expounded in *Plummer* v. *Webb*.

Plummer v. *Webb* was also followed in *The Yankee* v. *Gallagher*, 30 Fed. Cas. 781 (No. 18,124) (C.C.N.D. Calif. 1859), another abduction case. There, libellant brought an admiralty action *in rem* against the Ship YANKEE and *in personam* against her master, alleging that he had been seized by vigilanti while discharging his duties as a night watchman in San Francisco, confined in a cell for several days, put in irons, and taken on board a tug to the YANKEE, which carried him to the Sandwich (Hawaiian) Islands, where he was put ashore.

The Circuit Court affirmed a decision of the District Court holding that while the libel failed to state a cause of action *in rem* against the YANKEE, it did state a cause of action *in personam* against her master within the court's admiralty jurisdiction, and that libellant was entitled to damages. The Circuit Court carefully explained the concept of a continuing tort, which may originate ashore but be continued at sea; it held that while the non-seagoing portion of the tort would be subject to the jurisdiction of a common law court, this fact would not prevent a court of admiralty from exercising its authority over the portion of the conduct which occurred at sea.

The views expressed by Mr. Justice Story in *Plummer* v. *Webb* were again followed in *The Florence*, 9 Fed. Cas.

294 (No. 4880) (E.D. Mich. 1877), where an action *in rem* in admiralty was brought by the owner of a lighter against a scow, alleging that the master of the scow had seized and used the lighter without authority and had neglected to return her, although requested to do so. Exceptions were taken to the jurisdiction on the ground that no maritime lien could be asserted against the scow on the facts alleged because the injury had not been committed on navigable waters, the lighter having been seized by the scow's master within a fish-pound staked off from the river. The exceptions were overruled, however, the Court holding that the fact that the tort originated outside admiralty waters is immaterial when the improper exercise of control over another's property is thereafter continued on waters within the admiralty and maritime jurisdiction.

On a motion to dismiss a complaint, ". . . the accepted rule [is] that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley* v. *Gibson*, 355 U.S. 41, 45-46 (1957).

Applying these principles to the case at bar, the District Court, on the motion to dismiss, was required to assume the truth of the allegation that Hunt and BP were the true owners of the HILDA's cargo. If the cargo was their property, Respondent had no right to cause it to be loaded on the HILDA for carriage to the United States on a vessel chartered by Respondent for that purpose, to issue orders to the vessel's master concerning its disposition—including an order for its destruction by burning it as fuel, if necessary—, or to sell it.

Under *Plummer* v. *Webb*, *supra*, and the other authorities cited, these acts plainly constituted a continuing maritime tort, or a series of maritime torts. Therefore, even if

the District Court had been correct in holding that to support admiralty jurisdiction of a possessory action a plaintiff's right to possession must be related to a maritime tort or the breach of a maritime contract, or incidental to matters clearly within the admiralty jurisdiction, it should have denied the motion to dismiss, because here the condition was fully met.

Petitioner is of course fully mindful of the fact that before he can obtain a judgment entitling him to possession of part of the HILDA's cargo, now represented by the special bond, he will be required to prove the truth of his allegation of ownership; but for purposes of the present motion, that allegation is sufficient to put in issue the claim that Coastal wilfully diverted and took away his cargo while it was in admiralty waters.

CONCLUSION

For the reasons set forth above, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A

Complaint

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 73-1882

NELSON BUNKER HUNT and BP EXPLORATION COMPANY (LIBYA) Limited

—against—

A Cargo of Petroleum Products laden on the Steam Tanker HILDA.

Plaintiffs, NELSON BUNKER HUNT ("HUNT") and BP EXPLORATION COMPANY (LIBYA) LIMITED ("BP"), for their complaint herein, allege as follows:

1. This is a case of admiralty and maritime jurisdiction, as hereinafter more fully appears, and is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.

2. Plaintiff HUNT is a resident of Dallas, Texas. Plaintiff BP is a limited company organized and existing under the laws of the United Kingdom of Great Britain and Northern Ireland, with its principal office in London, England.

3. By a deed dated December 18, 1957, the Government of Libya, through its Petroleum Commission, granted and conveyed to Plaintiff HUNT Concession No. 65 in the Province of Cyreniaca, Libya. This deed granted to HUNT the exclusive right, for a period of 50 years, to "search for, . . . bore for, and extract petroleum" within the concession area and "to use, process, store, export and dispose of the same,"

and expressly specified that the rights created thereby "shall not be altered except by mutual consent of the parties". Under the applicable law, HUNT was authorized to recover from trespassers any petroleum extracted in violation of these exclusive rights.

4. On June 24, 1960, Plaintiff HUNT assigned to Plaintiff BP a one-half undivided interest in Concession No. 65, which assignment was approved by the Government of Libya in September, 1960.

5. In November, 1961, oil was discovered in the area covered by Concession No. 65. Thereafter, at considerable expense, Plaintiffs HUNT and BP continued to develop the area, known as the Sarir Field, and constructed a pipeline from that field to Marsa-al-Hariga/Tobruk, Libya, a distance of some 320 miles, solely for the transportation of oil produced from the field. Continuously from January 12, 1967, until the events hereinafter described, HUNT and BP produced and sold oil from the Sarir Field, and duly paid all taxes and royalties owing to the Government of Libya with respect to their activities in the Sarir Field and otherwise.

6. On December 7, 1971, without warning, the Government of Libya passed a law purporting to nationalize the operations of Plaintiff BP under Concession No. 65, and to transfer BP's rights therein to a newly-created entity named the Arabian Gulf Exploration Company, a Libyan joint stock company solely owned by the Libyan National Oil Corporation, a commercial agency of the Government of Libya. This action, which was promptly and vigorously protested by BP, was arbitrary, discriminatory, a violation of the express terms of Concession No. 65, and was taken

for political reasons unrelated to any legitimate public purpose. Further, this expropriation was ordered without reasonable provision for payment of prompt, adequate and effective compensation, and in fact no payment whatsoever has been made to BP.

7. On May 24, 1973, again without warning, representatives of the Arabian Gulf Exploration Company informed Plaintiff HUNT's representative in Benghazi, Libya, that no further oil would be delivered for HUNT's account. This de facto expropriation was followed on June 11, 1973 by the passage of a law purporting to nationalize the operations of HUNT in Concession No. 65. This law, was in all material respects, identical to that purportedly nationalizing BP's interests, and it also purported to transfer HUNT's rights in Concession No. 65 to the Arabian Gulf Exploration Company. As was the case in the taking of BP's property, the confiscation of HUNT's rights was arbitrary, discriminatory, a violation of the express terms of Concession No. 65, and was ordered for political reasons unrelated to any legitimate public purpose. Further, as in the case of the BP expropriation, it was ordered without reasonable provision for payment of prompt, adequate and effective compensation, and in fact no payment whatsoever has been made to HUNT.

8. Throughout the period since the seizure of their property in Libya, Plaintiffs BP and HUNT have both maintained, openly and publicly, that the expropriations violated international law and could not be given effect. Plaintiffs have made their position known by published notices in newspapers in various parts of the world and also by individual notices to persons or corporations thought to be arranging for the purchase, acquisition, or disposal of crude

oil, or the products thereof, derived from Concession No. 65. Such individual notice has been given to Coastal States Gas Producing Company ("Coastal States"), a corporation organized and existing under the laws of Delaware, and its subsidiaries and affiliates, advising them of Plaintiffs' continuing rights of ownership to such crude oil and its products.

9. In total disregard of such notices and of Plaintiffs' rights to the said oil and its products, Coastal States, or its subsidiaries and affiliates, have taken delivery of crude oil produced from Concession No. 65 and converted such oil to its own use. On information and belief, the whole or a portion of the cargo of petroleum products now on board the S.T. HILDA is the product of crude oil so produced from the area covered by Concession No. 65, and so converted by Coastal States, or its subsidiaries and affiliates. Said vessel with said cargo aboard will be in Philadelphia within this district during the pendency of this action.

10. Plaintiffs HUNT and BP are the true and lawful owners of the said cargo, or portion thereof, of petroleum products laden on the S.T. HILDA and are entitled to possession of the said cargo, or portion thereof, as such owners.

WHEREFORE, Plaintiffs respectfully pray:

1. That a warrant may be issued for the arrest of the aforesaid cargo of petroleum products laden on board the S.T. HILDA and proceeded against herein;

2. That all persons claiming to have any interest in the said cargo may be cited to appear before this Honorable Court and show cause why this Honorable Court should not order, adjudge and decree that Plaintiffs herein have full title to the said cargo, and why possession thereof should

not forthwith be delivered to the Plaintiffs herein, as the true and rightful owners thereof;

3. That if it be found that Plaintiffs are the true and lawful owners of a portion, but not the whole of said cargo, the same may be sold under the direction of this Honorable Court and the proceeds thereof brought into Court to be divided and distributed according to law; and

4. That Plaintiffs may have such other, further and different relief as may be just and proper.

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By RAUL BETANCOURT
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Complaint

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss.:

RAUL BETANCOURT, JR., after being duly sworn, on oath deposes and says:

That he is a member of the firm of Rawle & Henderson, Attorneys for Plaintiffs herein; that he has read the foregoing Complaint and knows the contents thereof, and that the same are true to the best of his knowledge, information and belief; that the sources of his information and the grounds for his belief are documents in his possession and in the possession of other attorneys for Plaintiffs, and conversations had with others; that the reason why this verification is made by deponent, and not by either of the Plaintiffs is that Plaintiff HUNT is a non-resident and is not within this district, and Plaintiff BP is a foreign limited company, no officer or director whereof is now within this district.

/s/ RAUL BETANCOURT, JR.
Raul Betancourt, Jr.

Sworn to before me this 17th day of August, 1973.

/s/ KATHRYN K. GIBBONS
Notary Public
Notary Public, Philadelphia, Phila. Co.
My Commission Expires October 21, 1974

APPENDIX B

Memorandum Opinion and Order

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 73-1882

[SAME TITLE]

[Officially Reported at 378 F. Supp. 701]

June 17, 1974

HUYETT, District Judge.

The ebb and flow of admiralty jurisdiction has not been characterized by the same predictability as the waters it governs.[1] Thus, the Supreme Court in Victory Carriers, Inc. v. Law, 404 U.S. 202, 205, 92, S.Ct. 418, 421, 30 L.Ed. 2d 383 (1971) stated: "The historic view of this Court has been that the maritime tort jurisdiction of the federal courts is determined by the locality of the accident and that maritime law governs only those torts occurring on the navigable waters of the United States." A little more than a year later, however, the Court held that maritime tort jurisdiction did not exist, absent a significant relationship to traditional maritime activity, when an aircraft goes down on navigable waters or when negligence occurs while the aircraft is flying over such waters. Executive Jet Aviation,

1. It should not be inferred from this statement that admiralty jurisdiction is defined by the ebb and flow of the tide, for this is certainly not the case. See The Daniel Ball, 77 U.S. (10 Wall.) 557, 19 L.Ed. 999 (1880); United States v. Stoeco Homes, Inc., 498 F.2d 597 (3 Cir. 1974).

Inc. v. City of Cleveland, 409 U.S. 249, 93 S.Ct. 493, 34 L.Ed.2d 454 (1972). These cases confirm Mr. Justice Holmes' statement in The Blackheath, 195 U.S. 361, 365, 25 S.Ct. 46, 47, 49 L.Ed. 236 (1904): "The precise scope of admiralty jurisdiction is not a matter of obvious principle or of very accurate history."

Nor can we in seeking to ascertain the proper boundaries of admiralty jurisdiction take comfort from Professors Gilmore and Black's observation "that the important cases in admiralty are *not* the borderline cases on jurisdiction; these may exercise a perverse fascination in the occasion they afford for elaborate casuistry, but the main business of the [admiralty] court involves claims for cargo damage, collision, seaman's injuries and the like—all well and comfortably within the circle, and far from the penumbra." G. Gilmore & C. Black, The Law of Admiralty 24 n. 88 (1957). In this case having an admiralty lienage never clearly defined and an admiralty rationale never clearly articulated we are concerned with a method of process.

The question presented is whether admiralty jurisdiction comprehends a suit to try title to or the right to possession of cargo when the claim to the cargo is not based on the breach of a maritime contract or the commission of a maritime tort. We hold that admiralty does not encompass such a suit.

In this action the plaintiffs, Nelson Baker Hunt and BP Exploration Company (Libya) Limited, seek to adjudicate their right of title to and possession of a cargo of petroleum products laden on the steam tanker Hilda which ship was attached by this court when it entered the Port of Philadelphia.[2] It is claimed that the petroleum products have

2. By stipulation between the parties a bond has been substituted for the cargo.

(footnote continued on next page)

their source in an oil field, the Sarir Field, discovered by the plaintiffs in November 1961 and unlawfully seized in two stages by the Libyan government in December 1971 and June 1973. The plaintiffs' claim of title to and possession of the cargo is alleged to result from a deed dated December 18, 1957, granted by the Government of Libya, through its Petroleum Commission, to plaintiff Hunt. A one-half undivided interest in the deed was assigned by Hunt to BP on June 24, 1960, with the approval of the Government of Libya. The only jurisdiction alleged in the complaint is that in admiralty pursuant to Fed.R.Civ.P. 9(h).[3]

A claim to the cargo has been filed by Coastal States Marketing, Inc. as purchaser from a refinery at Priola, Italy. Coastal States has moved to dismiss for lack of jurisdiction pursuant to Fed.R.Civ.P. 12(b)(1).

In admiralty suits to try title to property independent of questions concerning possession are referred to as petitory suits. A petitory suit must be based on a claim of legal title; the assertion of a mere equitable interest is not sufficient. See, The Captain Johnson, 64 F.Supp. 559 (D.N.J.1946). A possessory action is one in which a party seeks to adjudicate the right to possess property wrongfully taken. See Silver v. Sloop Silver Cloud, 259 F.Supp. 187

(footnote continued from previous page)

[The court's statement that the vessel was attached was apparently inadvertent. No property was actually attached; the *cargo* was about to be seized by the Marshal, but the bond was posted and seizure thus avoided.—Attorney for Petitioner.]

3. The complaint alleges that Hunt is a citizen of Texas and BP is a British Corporation. Coastal States in its answer states it is a citizen of Texas.

(S.D.N.Y.1966); 1 E. Benedict Admiralty § 73 (6th Ed. 1940). The nature of these actions and their recognition as part of admiralty jurisdiction of this country has been well established since Justice Story's decision sitting as a Circuit Justice in The Tilton, 23 F. Cas. p. 1277 (No. 14,054 C.C.Mass.1830). Petitory actions and actions for possession are *in rem* actions analogous to the common law remedies of replevin and detinue.[4] We must determine the circumstances in which admiralty provides for such suits.

A suit to try title to or possession of a ship wrongfully taken has long been considered within the jurisdiction of admiralty courts regardless of whether the claim to the ship is based on the breach of a maritime contract or the commission of a maritime tort. Ward v. Peck, 59 U.S. (18 How.) 267, 15 L.Ed. 383 (1855); The Tilton, *supra;* Gallagher v. Unenrolled Motor Vessel River Queen, 475 F.2d 117, 119 (5 Cir. 1973); Atamanchuck v. Atamanchuck, 61 F. Supp. 459 (D.N.J.1945); Gilmore and Black, The Law of Admiralty 24 (1957). The courts in sustaining admiralty jurisdiction in this instance recognize the maritime nature of questions involving the title and possession of ships. The courts' reasoning is analogous to that employed to sustain jurisdiction over questions involving injuries to seaman while in the performance of the ship's duties even though the injuries occur on land. See O'Donnell v. Great Lakes Dredge & Dock Co., 318 U.S. 36, 63 S.Ct. 488, 87 L.Ed. 596 (1943). The questions raised in such actions bear a significant relationship to maritime service, commerce or navigation. As stated by Justice Story:

> Indeed, the titles to ships principally depend upon the maritime law, as recognised and enforced in the common law; and the admiralty does little* the maritime law, so recognised and carry into effect the declarations of the maritime law, so recognized and enforced. No doubt exists, that the admiralty possesses authority to decree restitution of ships wrongfully withheld from the owners.

The Tilton, 23 Fed.Cas. *supra* at p. 1279. See also, Grigg v. The Clarissa Ann, 11 Fed.Cas. p. 47 (No. 5,826 E.D.Va. 1877).

The question whether admiralty provides for jurisdiction to try title to or possession of property other than ships, such as the cargo in this case, absent the existence of a maritime tort or contract, is not as clear. Courts have adjudicated questions of title to and possession of cargo either when there existed a maritime tort or contract or when the question relating to the cargo was incident to matters clearly within the admiralty jurisdiction. *See generally*, 1 E. Benedict, Admiralty § 73 at 154 n. 11 (6th Ed. 1940). Thus, in Post v. Jones, 60 U.S. (19 How.) 150, 15 L.Ed. 618 (1856), the Court considered the claims of the owners of cargo sold to the claimants after the ship had become disabled in far off areas of the waters. The sale of the cargo by the master of the ship to the claimants was adjudged not to have passed valid title, and the claimants

4. Supplementary Rule D of the Federal Rules of Civil Procedure provides for attachment of the ship in a petitory or possessory suit.

* This passage quoted from Mr. Justice Story is incomplete; the full text as it appears at 23 Fed. Cas. 1277, 1279 (No. 14,054) (C.C. Mass. 1830) is as follows:

> "Indeed, the titles to ships principally depend upon the maritime law, as recognized and enforced in the common law; and the admiralty does little *more in most instance causes, than to carry into effect the declarations of* the maritime law, so recognized and enforced. No doubt exists that the admiralty possesses authority to decree restitution of ships wrongfully withheld from the owners."
>
> The words in Italics were inadvertently omitted from the passage quoted by the District Court.—Attorney for Petitioner.

were therefore awarded only salvage. See also, American Insurance Co. v. Johnson, 1 Fed.Cas. pp. 665, 670 (No. 303 S.D.N.Y.1827). And in the Tietjen & Lang No. 2, 53 F. Supp. 459 (D.N.J.1949), the title to equipment was adjudicated along with the issue of title to a derrick lighter which had been sold pursuant to fraudulent representations.

Courts in other situations, however, have clearly limited jurisdiction to questions involving maritime torts or contracts. In Five Hundred and Twenty Eight Pieces of Mahogany, 9 Fed.Cas. pp. 200, 201 (No. 4,845 D.Mass. 1874), the court stated:

> [W]here the possession of movable property has been changed, against the right of the true owner, either by a maritime tort or by the breach of a maritime contract, to which the property was subject, the owner may vindicate his title in a court of admiralty, not only in personam, which is not doubted, but also in rem.

See also, The Bessie Mac, 21 F.Supp. 220 (D.Wash.1937); The Director, 26 F. 708, 712 (D.Oregon 1886); 1 Kent Comm. 379 n. b. (12 Ed. 1896). And in The Baltimore I, 10 F.2d 35 (2 Cir. 1925) the court held that a possessory action for chattels other than vessels was not maintainable in admiralty absent the existence of a maritime tort or contract. *See also*, Wenberg v. A Cargo of Mineral Phosphate, 15 F. 285 (S.D.N.Y.1883) (admiralty jurisdiction does not exist over petitory or possessory suit for minerals extracted from islands in which a concession was granted libellant by French Government but was then fraudulently obtained by claimants since the suit was not based on maritime contract or tort).

Unlike an action to try title or possession to a ship, questions concerning title or possession of cargo not based on a

maritime contract or tort do not bear a significant relationship to maritime commerce. Cargo obtains its maritime character solely because it is on the navigable waters. Questions involving its ownership or possession will depend upon relationships foreign to traditional maritime interests. This case presents an apt illustration. The merits of this case involve the legality of the actions by the Libyan Government in seizing the oil fields owned by the plaintiffs and the claimants title to the oil when purchased from a third party. Maritime interests will be of no concern to a just adjudication of the merits. For these reasons we conclude that as an admiralty court we lack jurisdiction.

In the alternative the plaintiffs have argued that their action is based on a maritime tort. It is argued that the claimant committed a maritime tort by taking wrongful possession of the cargo and continuing such possession on the navigable waters. In support of this position plaintiffs cite The Dauntless, 7 F. 366 (1881), decree dismissing libel, 19 F. 798 (E.D.N.Y.1883).

The Dauntless concerned the alleged unlawful taking of mineral phosphates from an island and carrying the phosphates by sea to New York. Although we question the court's conclusion in *The Dauntless*, we consider the case clearly distinguishable. The court was apparently swayed to find jurisdiction because the phosphate was taken from an island and immediately placed on a vessel. The vessel was a necessary instrument to successful consummation of the tort. But the court itself characterized the kind of facts involved in the case before us as posing a different question. The court stated:

> If the case were one of property stolen on shore and subsequently shipped on board a vessel, and the

> question were as to the right of the rightful owner of the property to reclaim it from the vessel by means of a possessory action in the admiralty, a different case would be presented.

The Dauntless, 7 F. *supra* at 367. The facts alleged in plaintiff's complaint do not even satisfy the jurisdictional requirement recognized in *The Dauntless*.

Finally, the plaintiffs contend that a maritime tort was committed when the claimant directed the Hilda's master not to proceed to ports in the United States and to return to Italy using the cargo if necessary for fuel. These facts came to light after the filing of the complaint when plaintiffs deposed the Hilda's master. Since these are matters outside the complaint we will not consider them on a motion to dismiss, but will allow plaintiffs time to amend the complaint if they so desire.

Order

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 73-1882

[SAME TITLE]

NOW, June 17, 1974, IT IS ORDERED that the complaint is DISMISSED FOR LACK OF JURISDICTION unless plaintiffs file an amended complaint within twenty (20) days.

/s/ DANIEL H. HUYETT, JR.
J.

APPENDIX C

Amended Complaint

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 73-1882

[SAME TITLE]

Plaintiffs NELSON BUNKER HUNT ("HUNT") and BP EXPLORATION COMPANY (LIBYA) LIMITED ("BP"), for their amended complaint herein, allege as follows:

1. This is a case of admiralty and maritime jurisdiction, as hereinafter more fully appears, and is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.

2. Plaintiff HUNT is a resident of Dallas, Texas. Plaintiff BP is a limited company organized and existing under the laws of England, with its principal office in London, England.

3. By a deed dated December 18, 1957, the Government of Libya, through its Petroleum Commission, granted and conveyed to plaintiff HUNT Concession No. 65 in the Province of Cyrenaica, Libya. This deed granted to HUNT the exclusive right, for a period of 50 years, to "search for, . . . bore for, and extract petroleum" within the concession area and "to use, process, store, export and dispose of the same," and expressly specified that the rights created thereby "shall not be altered except by mutual consent of the parties." Under the applicable law, HUNT was authorized to recover from trespassers any petroleum extracted in violation of these exclusive rights.

4. On June 24, 1960, plaintiff HUNT assigned to plaintiff BP a one-half undivided interest in Concession No. 65, which assignment was approved by the Government of Libya in September, 1960.

5. In November, 1961, oil was discovered in the area covered by Concession No. 65. Thereafter, at considerable expense, plaintiffs HUNT and BP continued to develop the area, known as the Sarir Field, and constructed a pipeline from that field to Marsa-al-Hariga/Tobruk, Libya, a distance of some 320 miles, solely for the transportation of oil produced from the field. Continuously from January 12, 1967, until the events hereinafter described, HUNT and BP produced and sold oil from the Sarir Field, and duly paid all taxes and royalties owing to the Government of Libya with respect to their activities in Sarir Field and otherwise.

6. Continuously from January 12, 1967, until the events hereinafter described, HUNT and BP shipped substantially all of the oil which they produced from Concession No. 65 from Libya through the use of vessels moving in maritime commerce. Due to the geographical location of the Sarir Field, which is far from refining facilities and populated areas, and to the fact that crude oil may be removed from the Sarir Field in quantity only by means of plaintiffs' pipeline terminating at the seaport of Marsa-al-Hariga/Tobruk, the shipment of Sarir crude oil on board a vessel and its subsequent transportation therein from that port to other ports constitutes a substantial and necessary part of each transaction by which the plaintiffs and their customers use and dispose of oil produced from Concession No. 65.

7. On December 7, 1971, without warning, the Government of Libya passed a law purporting to nationalize the

operations of plaintiff BP in Concession No. 65 and to transfer BP's rights therein to a newly-created entity named the Arabian Gulf Exploration Company, a Libyan joint stock company owned entirely by the Libyan National Oil Corporation, a commercial agency of the Government of Libya. This action, which was promptly and vigorously protested by BP, was arbitrary, discriminatory, a violation of the express terms of Concession No. 65, and was taken for political reasons unrelated to any legitimate public purpose. Further, this expropriation was ordered without reasonable provision for payment of prompt, adequate and effective compensation; and in fact no payment whatsoever has been made to BP.

8. On May 24, 1973, again without warning, representatives of the Arabian Gulf Exploration Company informed plaintiff HUNT's representative in Benghazi, Libya, that no further oil would be delivered for HUNT's account. This de facto expropriation was followed on June 11, 1973 by the passage of a law purporting to nationalize the operations of HUNT in Concession No. 65. This law was, in all material respects, identical to that purportedly nationalizing BP's interests, and it also purported to transfer HUNT's rights in Concession No. 65 to the Arabian Gulf Exploration Company. As was the case in the taking of BP's property, the confiscation of HUNT's rights was arbitrary, discriminatory, a violation of the express terms of Concession No. 65, and was ordered for political reasons unrelated to any legitimate public purpose. Further, as in the case of the purported BP expropriation, it was ordered without reasonable provision for payment of prompt, adequate and effective compensation; and in fact no payment whatsoever has been made to HUNT.

9. Throughout the period since the seizure of their property in Libya, plaintiffs BP and HUNT have both maintained openly and publicly that the expropriations violated international law and could not be given effect. Plaintiffs have made their position known through published notices in newspapers in various parts of the world and also through individual notices to persons or corporations thought to be arranging for the purchase, acquisition, or disposal of crude oil, or the products thereof, derived from Concession No. 65. Such individual notice has been given to Coastal States Gas Producing Company, a corporation organized and existing under the laws of Delaware, and its subsidiaries and affiliates (hereinafter referred to collectively as "Coastal States"), advising them of plaintiffs' continuing rights of ownership in such crude oil and its products.

10. In total disregard of such notices and of plaintiffs' rights to the said oil and its products, Coastal States have taken delivery on board vessels and otherwise of crude oil produced from Concession No. 65 at various times and have converted such oil to their own use by transporting it on board vessels from Marsa-al-Hariga/Tobruk to other locations. Coastal States' intent to ship the Sarir crude oil, and/or further to ship in similar fashion the refined products of Sarir crude oil, formed an integral part of the intent with which Coastal States acquired wrongful possession of such oil on board vessels at the port of Marsa-al-Hariga/Tobruk. Coastal States' acquisition of Sarir crude oil at that port, its lading on board vessels, and the further transportation of its refined products on board ships by Coastal States or their agents or designees has constituted a series of continuous transactions and continuing maritime torts carried out through the use of vessels moving in international maritime commerce and on the high seas.

11. Coastal States also entered into processing arrangements with a refinery located at Priola, Italy, whereby the Sarir crude oil produced from plaintiffs' Concession No. 65 and wrongfully taken away on board vessels from Libya to Italy by Coastal States was refined for the account of Coastal States and refined oil products were returned to Coastal States for ocean carriage and disposition by Coastal States and/or their agents or designees.

12. On information and belief, the whole or a portion of the cargo of petroleum products laden on board the S.T. HILDA at the time of the filing of the original Complaint in this action was the product of crude oil so produced from the area covered by Concession No. 65 and so converted by Coastal States. This cargo was laden on the S.T. HILDA at Priola, Italy, on or about July 31, 1973 and consigned to the United States.

13. On or about August 6, 1973 the HILDA's Owners, Victoria Transportation Corp., were advised by the vessel's Charterers, Coastal States Marketing Inc. ("Charterers"), a subsidiary or affiliate of Coastal States Gas Producing Company, that they intended to discharge the cargo at Boston or Philadelphia. On or about August 9, the Charterers (or persons acting on their behalf) ordered the cargo discharged at the Texaco Terminal at Boston; but two days later, the Charterers ordered it discharged at the Union Oil Terminal at Boston instead.

14. On or about August 12, the Charterers instructed the HILDA's Owners to order the vessel to wait outside the Port of Boston for further instructions; and on or about August 13, the Charterers directed the vessel to remain well beyond the 12-mile limit of the "contiguous zone" and advised the vessel's Owners that they might want to have the vessel return to Priola, Italy and discharge her cargo there, without entering a United States port, in which

event the Charterers would "authorize" the use of the cargo as fuel for the vessel. Later the same day, August 13, the Charterers repeated their instructions that the HILDA "definitely remain beyond the 12-mile limit" and not enter the Boston port area; and finally, on or about August 16, the Charterers changed the voyage orders and directed the HILDA to proceed to Philadelphia and discharge her entire cargo at the Publiker Terminal there.

15. The acts described in paragraphs 12, 13 and 14 of this Amended Complaint constituted the unlawful exercise of dominion over plaintiffs' cargo while it was on board a vessel on waters within the admiralty and maritime jurisdiction of the United States and were maritime torts.

16. While the said vessel and cargo were present in Philadelphia, within this District, the original Complaint herein was filed and a warrant for the arrest of the HILDA's cargo was duly issued. To avoid such arrest, the Charterers, having appeared and filed a "Claim of Owner" alleging ownership of the said cargo, filed a "Special Bond" representing the cargo and standing in its place.

17. Plaintiffs HUNT and BP are the true and lawful owners of all or at least a substantial portion of the said cargo of petroleum products laden on the S.T. HILDA and now represented by the Special Bond, and they are entitled to possession of the said cargo, or its proceeds, as such owners.

WHEREFORE, plaintiffs respectfully pray:

1. That all persons claiming to have any interest in the said cargo or the proceeds thereof may be cited to appear before this Honorable Court and show cause why this Honorable Court should not order, adjudge and degree that plaintiffs herein have full title to the said cargo or proceeds thereof, and why possession of the said cargo or the pro-

ceeds thereof should not forthwith be delivered to plaintiffs herein, as the true and rightful owners thereof;

2. That if it be found that plaintiffs are the true and lawful owners of a portion but not the whole of said cargo, the proceeds thereof may be divided and distributed according to law; and

3. That plaintiff may have such other, further and different relief as may be just and proper.

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Dated: June 21, 1974.

APPENDIX D

Memorandum Opinion and Order

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 73-1882

[SAME TITLE]

August 21, 1974

HUYETT, J.

We previously dismissed the complaint in this action holding that admiralty jurisdiction did not encompass a suit to try title to or possession of property other than a vessel when the claim to the property was not based on the breach of a maritime contract or the commission of a maritime tort.[1] However, we granted leave to plaintiffs to amend the complaint, if they so desired, to set forth facts alleging the breach of a maritime contract or the commission of a maritime tort which would entitle them to ownership or possession of the disputed property, a cargo of petroleum products laden on the steam tanker Hilda. Plaintiffs accepted our invitation to amend the complaint. Pursuant to the motion of claimant Coastal States Marketing, Inc., we now dismiss the amended complaint.

The amended complaint does not allege any facts supporting the existence of a maritime contract entitling plaintiffs either to title or possession of the petroleum products

1. We assume familiarity with our previous opinion. See *Hunt v. A Cargo of Petroleum Products Laden on Steam Tanker Hilda*, 378 F. Supp. 701 (E.D. Pa. filed June 17, 1974).

laden aboard the Hilda. The amended complaint alleges, as did the original complaint, ownership and right to possession of the petroleum products pursuant to an agreement with the Libyan Government whereby the plaintiffs are entitled to the oil produced by them from the Safir Field in Libya. The Libyan government has allegedly unlawfully repudiated the agreement. Since this repudiation the plaintiffs have given notice that they consider the Libyan government's actions to be illegal and in violation of international law. The parent corporation of the claimant in his action is alleged to have been so notified by plaintiffs.

Despite this notice Coastal States has allegedly taken delivery on board vessels of the crude oil produced in the Safir Field, and has converted the oil to its own use by transporting it on board vessels from Libya to other locations. The taking of possession by Coastal States of the oil at the Libyan port and its transfer to other places by means of ocean going vessels is alleged to constitute a series of continuing maritime torts. Finally, it is alleged that Coastal States unlawfully exercised dominion over the cargo while on shipment to the United States by giving orders to the ship's master concerning the port where the ship should dock.

Plaintiffs rely on the decision of Justice Story sitting as a Circuit Justice in *Plummer v. Webb*, 19 Fed. Cas. 891 (C.C. Mass. 1827) (No. 11,283) for the proposition that the facts they have alleged, when liberally construed as required by the federal rules of pleadings, state a continuing tort part of which occurred on the high seas and thus within admiralty jurisdiction. *Plummer* dealt with a suit by a father for the loss of services of his son who was

shipped aboard the ship of which defendant was the master pursuant to a contract between the father and the defendant. The defendant, however, compelled the son to proceed on a second voyage not consented to by the father or the son. It was on the second voyage that the son died. Justice Story held that a maritime tort was committed in abducting the son on the second voyage even though the tort could be said to have begun in port. That the tort began on land did not, however, deprive admiralty of jurisdiction since the act complained of was continuing and occurred principally on the sea. As Justice Story stated: "[I]f the libel be founded upon one single continued act, which was principally upon the sea, though part was upon the land, a prohibition will not go." *Plummer v. Webb*, 19 Fed. Cas. *supra*, at 893.

It is clear from *Plummer* and from the case it relies solely upon for precedent, *Steele* v. *Thacher*, 22 Fed. Cas. 1204 (D. Maine 1825) (No. 13,348), that Justice Story was not propounding a theory of continuing tort. Rather he was responding to the contention that common law courts had exclusive jurisdiction over torts whenever the tort is in any way committed on land. The act complained of in *Plummer* was the taking of the son by the ship's master on an unauthorized voyage which, along with ill treatment received from the master, resulted in the son's death at sea. Thus *Plummer* simply stands for the proposition that a tort principally committed on the high seas is within admiralty jurisdiction even though it may have had some connection with the land. The other decisions cited by plaintiffs are in accord with this proposition. See *Sherwood* v. *Hall*, 21 Fed. Cas. 1292 (C.C. Mass. 1837) (No. 12,777); *The Yankee* v. *Gallagher*, 30 Fed. Cas. 781 (C.C.

Colo. 1859) (No. 18,124); *The Florence*, 9 Fed. Cas. 294 (E.D. Mich. 1877) (No. 4,880).

The act complained of in this case is the unauthorized seizure of plaintiffs' property by the Libyan Government. It cannot be said that the subsequent transfer of the property by Coastal States was a tort which principally occurred on the high seas. The transfer of the oil was a tort only if the Libyan government's action was tortious. Plaintiffs cannot prevail by demonstrating that Coastal States had unlawful possession of the petroleum products while on the high seas unless they can first demonstrate that the Libyan Government's actions were unlawful. In the abduction cases cited by plaintiffs no preliminary showing of an unlawful taking on the land was necessary to sustain liability and the mere showing of a voyage not consented to was sufficient to obtain liability.

An argument can be made that regardless of where the principal act occurred as a matter of substantive tort law, the unlawful possession of plaintiffs' property by Coastal States was a continuing tort. Indeed, this is the manner in which plaintiffs read the cases they have cited to us. For purposes of computing damages and applying the statute of limitations some common law courts treat the entire period of defendant's wrongful possession as a continuing tort and allow plaintiff to elect the time of conversion. See 1 F. Harper and F. James, *The Law of Torts* §2.34 at 185-86 (1956). The more accepted rule, however, is that the wrong occurs when there has been an actionable taking. F. Harper and F. James, *The Law of Torts*, *supra*. The actionable taking in this case did not occur on the high seas. See 1 E. Benedict, *Admiralty* § 128b at 358 (6 ed. 1940); *Louis-Dreyfus* v. *Patterson Steamship*, 43 F.

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2d 824, 828 (2 Cir. 1930) (L. Hand, J.); *Compare, The Lydia*, 1 F. 2d 18 (2 Cir. 1924).[2]

Thus, whether viewed as a question concerning the limits of admiralty jurisdiction or concerning the scope of the substantive wrong alleged in the amended complaint, this court lacks jurisdiction.

Order

IN THE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 73-1882

[SAME TITLE]

NOW, August 21, 1974, IT IS ORDERED that the amended complaint is DISMISSED.

/s/ DANIEL H. HUYETT
J.

2. The rule that conversion is a transitory tort does not imply anything contrary to what we have stated. The transitory nature of a tort supplies the court in whose jurisdiction the converted property is found with personal jurisdiction. See *Stone* v. *United States*, 167 U.S. 178 (1897). We deal in this case with subject matter jurisdiction in admiralty. We have already held in our previous decision in this case that the mere presence of property on the high seas does not supply admiralty jurisdiction.

APPENDIX E

Judgment Order

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 74-2091

NELSON BUNKER HUNT and BP EXPLORATION COMPANY (LIBYA) LIMITED

v.

A Cargo of Petroleum Products laden on the Steam Tanker HILDA

NELSON BUNKER HUNT, *Appellant*
(D. C. Civil No. 73-1882)

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Argued April 29, 1975

Before VAN DUSEN, ADAMS and GARTH,
Circuit Judges

[Appearances deleted]

JUDGMENT ORDER

After consideration of all contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.[1]

Costs taxed against appellant.

By the Court:
/s/ VAN DUSEN
Circuit Judge

Dated: May 5, 1975

Attest:
/s/ THOMAS F. QUINN
Thomas F. Quinn, Clerk

---

1. We affirm for the reasons stated by the two district court opinions. *Hunt* v. *A Cargo of Petroleum Products*, slip opinion (E.D. Pa., Civil No. 73-1882, Aug. 21, 1974); *Hunt* v. *A Cargo of Petroleum Products*, 378 F. Supp. 701 (E.D. Pa. 1974). Contrary to the appellant's contentions, the district court did not strictly limit admiralty jurisdiction to cases involving a maritime tort or contract. Instead, the district court stated its jurisdictional limits as follows:

> "Courts have adjudicated questions of title to and possession of cargo either when there existed a maritime tort or contract or when the question relating to the cargo was incident to matters clearly within the admiralty jurisdiction." 378 F. Supp. at 704.

Supreme Court, U. S.
FILED
AUG 27 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1975

No. 75-162

NELSON BUNKER HUNT,
Petitioner,

v.

COASTAL STATES MARKETING, INC., Claimant of a Cargo of Petroleum Products Laden on the Steam Tanker Hilda,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

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IN THE

Supreme Court of the United States

—

OCTOBER TERM, 1975.

—

No. 75-162.

—

NELSON BUNKER HUNT,

Petitioner,

v.

COASTAL STATES MARKETING, INC., CLAIMANT OF A CARGO OF PETROLEUM PRODUCTS LADEN ON THE STEAM TANKER HILDA,

Respondent.

———

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

Respondent, Coastal States Marketing, Inc., respectfully prays that this Honorable Court shall deny the petition for a writ of certiorari to the United States Court of Appeals for the Third Circuit in the above matter, and in support of its opposition submits the following.

REASONS FOR DENYING THE WRIT.

I. The Decision Below Does Not Contravene *Post v. Jones*, 60 U. S. 150 (1857), or Supplemental Rule D, F. R. C. P.

Contrary to petitioner's assertion, *Post v. Jones* was not an action for the possession of cargo. What was really involved in *Post v. Jones* is disclosed by the opening sentence of this Court's opinion:

> "The libelants, owners of the ship RICHMOND and cargo filed the libel in this case for an adjustment of salvage . . ."

Incidental to the salvage cause of action, this Court invalidated the purported auction sale of a wrecked vessel and her distressed cargo. Thus we have an illustration of the very principle recognized by the decision below: that where a matter (salvage) is clearly within the admiralty jurisdiction, the admiralty court has the incidental power to decide a question of ownership and/or possession.

That is not the situation in the present case. Here the root question is the validity of the action of the Libyan government in nationalizing petitioner's oil concession within the Libyan territorial jurisdiction. There is no way that petitioner can prevail without an adjudication of the invalidity of that action. Certainly the action of a foreign sovereign in nationalizing a natural resource within its boundaries is not within the admiralty jurisdiction of the United States.

Petitioner consistently refers to its cause of action as one for "possession" of cargo. However, it is more than that; fundamentally, petitioner seeks an adjudication of title. This is abundantly clear from the language of the amended complaint (Appendix C-1).

Paragraph 17 of the amended complaint alleges that plaintiffs are "the true and lawful *owners* of all or at least a substantial portion of the said cargo . . ." and that they are entitled to possession of the cargo *"as such owners"*. The first prayer of the complaint is that the Court shall decree that plaintiffs "have full *title* to the said cargo . . ." and that possession should be delivered to plaintiffs "as the true and rightful *owners* thereof" (Appendix C-6; emphasis supplied). This dramatizes that the entire decision turns upon the validity of the action of the Libyan government.

Supplemental Rule D, F. R. C. P. is of no importance and is in no sense contravened by the decision below. This is a purely procedural rule which does not purport either to confer or define jurisdiction. It simply prescribes the mechanics by which certain claims which are substantively within the admiralty jurisdiction may be prosecuted. *Wright & Miller, Federal Practice and Procedure*, Section 3231, Volume 12, Page 282; see also *Silver v. Sloop Silver Cloud*, 259 F. Supp. 187, 189 (S. D. N. Y. 1966).

In this connection it is noteworthy that even Rule D does not encompass the basic issue involved here—namely, title to the cargo in question. Rule D distinguishes between vessel and cargo and provides, *inter alia*, for trying the issue of title to a vessel. But as to cargo, the rule speaks only of possession. It cannot be assumed that this distinction was inadvertent.

Petitioner suggests that no valid distinction exists between vessel and cargo insofar as admiralty jurisdictional considerations are concerned. This is not so. A vessel is irretrievably bound to the sea and its attendant perils and profits. Unless afloat, a vessel and her appurtenances and equipment are no more purposeful than a beached whale.

On the other hand, cargo has only the most transient and fortuitous connection with navigable waters. That it happens to be aboard a vessel at a particular time is of no jurisdictional significance. Calling cargo "maritime property" is a purely invocatory exercise. In all reality there is nothing "maritime" about a cargo of oil. It would be just as unrealistic to call this same oil "highway property" while being transported by truck, or "railroad property" while being carried aboard a tank car. Surely the decision is not furthered by attaching a label —especially one that will not stick.

If petitioner's cause of action were within the admiralty jurisdiction, then presumably the decision would be determined under the principles of the general maritime law. What is the general maritime law as to the validity of the nationalization of terrene property by a foreign sovereign? Merely stating the question demonstrates the incongruity.

II. Petitioner's Complaint Does Not State a Cause of Action for a Maritime Tort, and Admiralty Jurisdiction Cannot be Sustained on That Basis.

The Court below clearly pointed out that if any tort was committed, it occurred ashore in Libya when the government of that country nationalized petitioner's oil concession:

> "The act complained of in this case is the unauthorized seizure of plaintiffs' property by the Libyan Government. It cannot be said that the subsequent transfer of the property by Coastal States was a tort which principally occurred on the high seas. The transfer of the oil was a tort only if the Libyan government's action was tortious. Plaintiffs cannot prevail by demonstrating that Coastal States had unlawful possession of the petroleum products while on the high seas unless they can first demonstrate that the Libyan Government's actions were unlawful. In the abduction cases cited by plaintiffs no preliminary showing of an unlawful taking on the land was necessary to sustain liability and the mere showing of a voyage not consented to was sufficient to obtain liability." (Appendix D-4.)

The two cases closest in point hold that there is no admiralty jurisdiction based on maritime tort in analogous situations.

In *American Hawaiian Ventures v. M.V.J. Latuharhary*, 257 F. Supp. 622, 625 (D. N. J., 1966) the Court dealt with a cause of action involving the nationalization of rubber plantations by the government of Indonesia. What was there said is applicable by parallel reasoning to the present case:

> "Beyond dispute the present action is overwhelmingly one for conversion on Sumatra proper of nonmaritime property, a conversion having no flavor of admiralty whatsoever. The added assertion of incidental seizures of loading vessels, even if not subject to defects discussed below, is insufficient to work some magical conversion of this suit into one in admiralty.
>
> ° ° °
>
> 'Nor is the assertion that some of its present cargo may be rubber which was seized in the alleged conversion some six years ago sufficient to support a maritime lien. The connection between the alleged conversion is too remote from the activities of the vessel to invoke admiralty jurisdiction."

Schoening v. A Shipment of 102 Jute Bags, 132 F. Supp. 561 (E. D. Pa., 1955) was a suit in admiralty for conversion of goods allegedly belonging to the libellant. Denying admiralty jurisdiction, the Court said:

> "In resolving this jurisdictional problem it is essential to determine the elements of admiralty jurisdiction as it pertains to torts. In United States v. Matson Navigation Co., 9 Cir., 1953, 201 F. 2d 610, 613, Judge Stephens stated:
>
> > "An essential to the jurisdiction of the admiralty courts over a tort is that it was *committed* in relation to navigable waters. (Emphasis supplied)"
>
> * * *
>
> "But in the instant case, was there a tort either 'committed in relation to navigable waters' or 'arising out of a maritime status or relationship'? We think not. The conversion was complete when the goods were removed from the warehouse in East Greenville, Pennsylvania. Certainly admiralty jurisdiction did not attach at that time; and it cannot do so now, merely because the goods subject to this conversion are shipped by an innocent carrier on navigable waters. A remote connection between the cause of action and activity on navigable waters is not sufficient to invoke admiralty jurisdiction. *Forgione v. United States*, 3 Cir., 1953, 202 F. 2d 249." (at 132 F. Supp. 562).

In urging this Court to hold that admiralty jurisdiction based on maritime tort extends to the present case, petitioner fails to heed the admonition of this Court in *Executive Jet Aviation, Inc. v. City of Cleveland, Ohio* 409 U. S. 249, wherein this Court said:

> "Just last Term in Victory Carriers, Inc. v. Law, 404 U. S., at 212, we observed that in determining whether to expand admiralty jurisdiction '*we should proceed with caution. . . .*'." (at 409 U. S. 272; emphasis supplied).

Respondent further submits that no tort, maritime or terrene, is pleaded in petitioner's complaint. In essence, petitioner alleges that it disputes the legal position of the Libyan government, and that it notified various parties, including respondent, of its position. On this basis, petitioner contends that anyone who dealt with the property in a manner inconsistent with petitioner's assertion committed a tort.

No case has been cited, and none has been found supporting the notion that a party who deals with property in a manner inconsistent with the asserted, but unadjudicated legal position espoused by another, thereby becomes a tortfeasor.

However, this underlying issue need not be reached because even if a tort were involved, it was most certainly not a maritime tort. It occurred on land, and subsequent events did not change the situs or nature of the alleged wrong.

No point is seen in discussing the numerous authorities cited by petitioner. To the extent that their distinctions are not immediately apparent, they are dealt with adequately and convincingly in the decisions below. These decisions clearly demonstrate why admiralty jurisdiction cannot be sustained on the basis that the cause of action is itself within the admiralty jurisdiction or is incidental to a cause of action within such jurisdiction, or on the basis of a maritime tort.

CONCLUSION.

For the reasons set forth above, respondent prays that the petition for a writ of certiorari be denied.

Respectfully submitted,

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